

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELIDA ROSAS)	
Claimant)	
VS.)	
)	
IBP, INC.)	Docket No. 140,073
Respondent)	
Self-Insured)	

ORDER

Respondent requested review of the Award dated September 24, 1996, entered by Special Administrative Law Judge Michael T. Harris. The Appeals Board heard oral argument on April 1, 1997. Jeff Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary M. Korte who recused himself.

APPEARANCES

Diane F. Barger of Wichita, Kansas, appeared for the claimant. Tina M. Sabag of Dakota City, Nebraska, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. In addition, the medical report of Marc R. Baraban, M.D., whom the Administrative Law Judge selected to perform an independent medical evaluation, is also part of the evidentiary record.

ISSUES

The Special Administrative Law Judge found claimant sustained bilateral upper extremity injuries and awarded claimant benefits for a 59 percent permanent partial general disability. The parties requested the Appeals Board to review the following issues:

- (1) Nature and extent of injury and disability.
- (2) Average weekly wage.
- (3) Claimant's entitlement to unauthorized and future medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be modified.

Claimant began working for the respondent in November 1988 as a wizard knife operator. Six months later, in May 1989, claimant felt a pop in her left wrist while she was turning a bone. Claimant obtained medical treatment from the company doctor and was placed on light duty using her right arm only. Because of performing the one-handed job, by August 10, 1989, claimant was experiencing right hand symptoms.

Claimant continued to work in the light duty position until the end of May 1990 when she took maternity leave. After her baby was born, claimant returned to work for respondent on October 4, 1990, and worked until October 30, 1990, when she voluntarily terminated her employment.

The Special Administrative Law Judge found claimant's accident culminated on October 31, 1990, and the parties did not appeal that finding.

As in many workers compensation cases, there is wide divergence in the medical opinion. Sergio Delgado, M.D., who treated claimant for her upper extremity problems beginning in August 1989, saw her again in October 1990 after she had returned to work. Dr. Delgado indicated that claimant had not sustained any permanent functional impairment to either hand or wrist as of the date of his last examination in October 1990. In arriving at that conclusion, the doctor considered nerve conduction tests which were within normal limits, strength tests that indicated claimant was not providing full effort, and the complete lack of objective findings of right hand injury. However, Edward J. Prostic, M.D., who was selected by claimant's counsel to provide an evaluation, saw claimant almost two and a half years after she last worked for the respondent and indicated

that in addition to the cyst on the left hand claimant also had mild bilateral carpal tunnel syndrome which resulted in permanent functional impairment.

In this instance, the Appeals Board finds Dr. Delgado's opinions more persuasive than Dr. Prostic's. As a treating physician, the Appeals Board believes Dr. Delgado was in a better position to evaluate claimant's injuries and had the opportunity to evaluate claimant more contemporaneously with the occurrence of the accidental injury. Also, the Appeals Board notes the opinions contained in the medical report of Marc R. Baraban, M.D., whom the Administrative Law Judge appointed in July 1991 to perform an independent medical evaluation. Dr. Baraban indicated claimant had symptoms in a nonanatomic pattern and had vague complaints.

The Appeals Board agrees with the Special Administrative Law Judge's conclusion that claimant's average weekly wage is \$315.41. At oral argument counsel agreed \$30 per week was the appropriate weekly value of additional compensation items. Counsel also agreed the only issue regarding average weekly wage was whether it should be computed based upon a five or six day work week.

Based upon the information contained in the wage statement shown as an exhibit to the regular hearing transcript, the Appeals Board finds claimant was not regularly expected to work six days per week. Therefore, claimant's average weekly wage is \$315.41 which is comprised of \$285.41 for regular and overtime wages combined with \$30 per week for additional compensation items.

Based upon the above findings and conclusions, the Appeals Board finds claimant has failed to prove permanent injury involving the upper extremities and that claimant's benefits should, therefore, be limited to the temporary total disability provided. Claimant is entitled to the medical benefits provided as well as up to \$350 in unauthorized medical benefits upon presentation to respondent of proof of payment. Additionally, claimant may request additional medical benefits, including removal of the cyst on the left hand, upon proper application to the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated September 24, 1996, entered by Special Administrative Law Judge Michael T. Harris should be, and hereby is, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Elida Rosas, and against the respondent, IBP, Inc., for an accidental injury which began in May 1989 and culminated on October 31, 1990, and based upon an average weekly wage of \$315.41

for 63.93 weeks of temporary total disability compensation at the rate of \$210.28 per week or \$13,443.20, which is all due and owing less any amounts previously paid.

Claimant may request additional medical benefits upon proper application to the Director. Also, claimant is entitled to unauthorized medical benefits up to \$350 upon presentation of proof of payment.

The Appeals Board hereby adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Tina M. Sabag, Dakota City, NE
Michael T. Harris, Special Administrative Law Judge
Office of Administrative Law Judge, Topeka, KS
Philip S. Harness, Director